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conviction for crime, as required by Code 1919, §§ 6252, 6253, are not part of the record before the court on writ of error, in the absence of any explanation of the delay.

[Ed. Note.—For other cases, see 5 Va.-W. Va. Enc. Dig. 387.]

**2. Criminal Law (§ 1114 (3)\*)—Writ of Error Dismissed Where Assignments Require Consideration of Evidence Which Is Not in the Record.**—Where all of the assignments of error depend on the consideration of the evidence which is not in the record, the writ of error must be dismissed.

[Ed. Note.—For other cases, see 5 Va.-W. Va. Enc. Dig. 386.]

Error to Circuit Court, Wise County.

George Sorros was convicted of grand larceny, and he brings error. Writ of error dismissed.

*Kilgore & Dotson*, of Wise, for plaintiff in error.

*John R. Saunders*, *Atty. Gen.*, and *J. D. Hank, Jr.*, *Asst. Atty. Gen.*, for the Commonwealth.

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BENNETT et al. v. GARRETT et al.

June 15, 1922.

[112 S. E. 772.]

**1. Municipal Corporations (§ 12 (12)\*)—Assignment of Error Not Sustained because Contradicted by Affirmative Admissions in Bill of Exceptions and Elsewhere in Record.**—On writ of error from an order denying a petition under Code 1919, §§ 2881-2885, for a town charter, an assignment, complaining of the filing of opposing petitions by residents of the county on the ground that they were signed by persons not properly made defendants cannot be sustained, where the bill of exceptions shows affirmatively that "the several defendants" presented the petitions, and asked to be made defendants, and that the court permitted the filing thereof over plaintiffs' objections, and plaintiffs also relied on another portion of the record, showing that the court held in terms that petitioners would be regarded as defendants, which was in accord with Code 1919, § 2883, permitting residents of the county, on motion, to be made defendants; the statute prescribing no particular form in which the motion shall be made.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 524.]

**2. Municipal Corporations (§ 12 (6)\*)—Failure to File Petitions Opposing Application for Town Charter before Trial Waived by Applicants' Failure to Claim Prejudice or Move for Continuance.**—That petitions opposing an application for a town charter should have been filed far enough in advance of the trial to enable applicants to ascertain the signers' interest, instead of being filed on the first day of

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\*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

the trial, was waived by applicants' failure to make sufficiently definite claim of prejudice when the petitions were offered, and to move for a continuance on the ground of surprise.

[Ed. Note.—For other cases, see 10 Va.-W. Va. Enc. Dig. 166.]

**3. Municipal Corporations (§ 12 (12)\*)—Assignment that Numerous Names to Petition Opposing Application for Town Charter Unduly Influenced Court Held Untenable, It Being a Matter for Court's Consideration.**—An assignment of error, complaining of the court's action, in proceedings to obtain a town charter, in permitting the filing of opposing petitions signed by numerous residents of the county on the first day of the trial, on the ground that the court was unduly influenced thereby, held untenable, as the fact that many residents of the county opposed the incorporation, if their opposition was not merely whimsical, was a proper matter for consideration by the court, which, it must be presumed was, not unduly influenced thereby, Code 1919, §§ 2881-2885, which permits residents of the county to come in and defend, being intended primarily to protect the welfare of the whole county and its inhabitants.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 609.]

**4. Appeal and Error (§ 690 (5)\*)—Error in Refusal to Strike out Evidence Held Insufficiently Presented by the Bill of Exceptions.**—Alleged error in overruling a motion, in proceedings to obtain a town charter, to strike out "all the evidence that had gone into the record regarding what would be done with the schools if the community was incorporated," held insufficiently presented by a bill of exceptions which failed to show what evidence had gone into the record on that question.

[Ed. Note.—For other cases, see 5 Va.-W. Va. Enc. Dig. 386.]

**5. Appeal and Error (§ 241\*)—Motion to Strike Evidence Held Too Vague to Present Question on Appeal.**—A motion to strike out "all the evidence that had gone into the record" regarding a certain issue is too vague to present question on appeal.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 595.]

**6. Municipal Corporations (§ 12 (7)\*)—Effect of Incorporation of Town within Thickly Settled Section on Schools, or Other Matters Relating Only to Its Welfare, Held Immaterial.**—The effect of incorporation of a community within a thickly settled section on the schools of the proposed town, or any other matter relating only to its welfare, apart from that of the surrounding territory within the county, is immaterial in proceedings to obtain a town charter.

[Ed. Note.—For other cases, see 10 Va.-W. Va. Enc. Dig. 160.]

**7. Municipal Corporations (§ 12 (7)\*)—Testimony as to Nearby Town's Ability to Finance and Maintain Municipal Government Properly Excluded in Proceeding to Obtain Town Charter.**—In proceed-

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\*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

ings to obtain a town charter under Code 1919, §§ 2881-2885, testimony that a nearby town with approximately the same taxable values had successfully financed its municipal government, and provided its inhabitants with sewers, water, etc., was properly excluded as relating to a collateral fact, existing under conditions not shown to be substantially similar.

[Ed. Note.—For other cases, see 10 Va.-W. Va. Enc. Dig. 254.]

**8. Municipal Corporations (§ 12 (12)\*)—Decision of Lower Courts Accorded Much Latitude in Proceedings to Incorporate Towns.**—In proceedings to incorporate towns, the statute (Code 1919, §§ 2881-2885) contemplates that lower courts shall hear the evidence, and their discretion and decision will be accorded much latitude by the Supreme Court, especially on question of fact.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 609.]

**9. Municipal Corporations (§ 12 (7)\*)—Grant of Town Charter on Petition of Incorporated "Community" within Thickly Settled Section Properly Denied.**—In view of Code 1919, §§ 2881-2885, providing that before a town charter is granted the court must be satisfied that "the general good of the community" will be promoted, that the board of supervisors or residents of the county may become parties defendant and resist the application, and that the court may dispose of the matter as in its discretion may appear best, the court properly denied a petition for a town charter for a community, which it found from the evidence was part of a thickly settled section of a densely populated county, the interest of other nearby settlements in which would probably be seriously prejudiced, even if the interests of the inhabitants of the proposed corporate area would be promoted and a large majority thereof were in favor of the charter; the word "community" not being necessarily confined to the proposed corporate limits, but construed as embracing the whole section, where such limits are carved out of a thickly settled section.

[Ed. Note.—For other cases, see 10 Va.-W. Va. Enc. Dig. 159.]

Error to Circuit Court, Arlington County.

Proceeding by Bennett and other inhabitants of an incorporated community to obtain a town charter, opposed by Garrett and others. From an order denying the petition and dismissing the cause, petitioners bring error. Affirmed.

*Chas. F. Harrison*, of Leesburg, and *A. P. Payne*, for plaintiffs in error.

*Wm. C. Gloth*, of Rosslyn, *E. W. R. Ewing*, of Ballston, and *H. R. Thomas*, of Clarendon, for defendants in error.

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\*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.